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Federal Communications Commission

DA 04-3229

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Reclassification of License  
of FM Station KNUE,  
Tyler, Texas

RM-10780

ORDER TO SHOW CAUSE

Adopted: October 13, 2004

Released: October 15, 2004

Comment Date: November 29, 2004

By the Assistant Chief, Audio Division, Media Bureau:

1. Before the Audio Division is a Petition for Rule Making filed by Charles Crawford ("Petitioner"), requesting the allotment of Channel 267A at Rosebud, Texas, as that community's first local aural transmission service. To accommodate this allotment, Petitioner requests a change in reference coordinates for vacant FM Channel 267A at Madisonville, Texas, which requires the reclassification of FM Station KNUE, Channel 268C, Tyler, Texas, to specify operation on Channel 268C0. FM Station KNUE currently operates on Channel 268C with an effective radiated power ("ERP") of 100 kilowatts at 327 meters height above average terrain ("HAAT"). FM Station KNUE is subject to reclassification as a Class C0 facility, since it is operating below the minimum Class C antenna height requirements of at least 451 meters HAAT.<sup>1</sup>

2. Section 316(a) of the Communications Act of 1934, as amended, permits the Commission to modify an authorization if such action is in the public interest.<sup>2</sup> Further, pursuant to Section 316(a), we are required to notify the affected station of the proposed action, as well as the public interest reasons for the action, and afford at least 30 days to respond. This procedure is set forth in Section 1.87 of the Commission's rules.<sup>3</sup> In this regards, a Class C0 reclassification of FM Station KNUE would accommodate the Petitioner's request to allot Channel 267A to Rosebud, as its first local aural transmission service. Therefore, the Petitioner's request has sufficient public interest benefits and justifies the issuance of an order to show cause.

3. The reclassification of a Class C FM station to a Class C0 station may be initiated through the

<sup>1</sup> See 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21,649 (2000) ("Second Report and Order"), and 47 C.F.R. §§ 1.420(g), n. 2, and 73.3573, n. 4.

<sup>2</sup> 47 U.S.C. § 316(a).

<sup>3</sup> See Modification of FM and Television Licenses Pursuant to Section 316 of the Communications Act, 2 FCC Rcd 3327 (1987).

filing of a petition for rule making to amend the FM Table of Allotments.<sup>4</sup> In instances where an initiating petition proposes amending the FM Table of Allotments in addition to the proposed reclassification of a Class C FM station, the Commission must issue an order to show cause as set forth in Section 73.3573, note 4, of the Commission's rules. In such circumstances, a notice of proposed rule making will be issued only after the reclassification issue has been resolved.

4. A petitioner proposing both amendment of the FM Table of Allotments and reclassification of a Class C FM station must certify that no alternative channel is available for the proposed service.<sup>5</sup> Petitioner has submitted such certification. Therefore, in order to comply with the Commission's Class C0 reclassification procedures, we must issue this *Order to Show Cause* directed to Capstar Royalty II Corporation ("Capstar"), licensee of FM Station KNUE, Channel 268C, Tyler, Texas. As a result, Capstar is required to show cause why its license should not be modified to specify operation on Channel 268C0 in lieu of Channel 268C at Tyler.

5. The license for FM Station KNUE (File No. BLH-19850307KT) at Tyler, Texas, can be modified to Channel 268C0 at its current authorized transmitter site located at coordinates 32-15-35 NL and 94-57-02 WL. Pursuant to Section 1.87 of the Commission's rules, Capstar, no later than November 29, 2004, may file a written statement showing with particularity why its respective license (File No. BLH-19850307KT) should not be modified as proposed in this *Order to Show Cause*. The Commission may call on Capstar to furnish additional information. If Capstar raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modifications, deny the modifications, or set the matter of modifications for hearing. If no written statement is filed by the date referred to above, Capstar will be deemed to have consented to the modification as proposed in this *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel modification is found to be in the public interest.

6. If Capstar chooses to seek authority to modify its facilities, an acceptable application for a construction permit to increase the antenna height to at least 451 meters HAAT for FM Station KNUE must be filed with the Commission within 180 days subsequent to the show cause response due date (November 29, 2004). Upon the filing of an acceptable construction permit application, the proposal to allot Channel 267A at Rosebud, will be dismissed. The present three-year construction period will be applicable if a construction permit is obtained by Capstar for Channel 268C, as specified herein, under this procedure. If the construction is not completed as authorized, FM Station KNUE is subject to reclassification automatically as a Class C0 station, and, in that event, a new petition for rule making to allot Channel 267A at Rosebud, may be refiled.

7. IT IS FURTHER ORDERED, That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL Send a copy of this *Order to Show Cause* by Certified Mail, Return Receipt Requested, to the following licensee and its counsel:

<sup>4</sup> *Second Report and Order*, *supra*, and 47 C.F.R. § 1.420, n.2.

<sup>5</sup> See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Red at 21,662, ¶ 26.

Capstar Royalty II Corporation  
600 Congress Avenue  
Suite 1400  
Austin, Texas 78701

8. For further information concerning this proceeding, contact Rolanda F. Smith, Media Bureau,  
(202) 418-2180.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Assistant Chief  
Audio Division  
Media Bureau